

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re: _____) Chapter 11
) _____
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
) _____
 Debtor.) _____

STIPULATION RESOLVING CLAIM OF CAPITOL INDEMNITY CORPORATION

James A. Knauer, as Chapter 11 Trustee (the "Trustee") for Eastern Livestock Co., LLC ("ELC") and Capitol Indemnity Corporation ("CIC"), both by counsel, hereby stipulate and agree as follows:

Recitals

1. CIC filed a claim in the above-captioned Chapter 11 case (the "Chapter 11 Case") designated as proof of claim number 42 (the "CIC Proof of Claim") on the official claims register maintained by The BMC Group, Inc. Pursuant to the CIC Bank Proof of Claim, CIC asserts an unsecured claim in the amount of \$875,000 (the "CIC Claim") under a General Indemnity Agreement entered into by ELC, certain third party obligors (the "Third Party Obligors") and CIC. Pursuant to the General Indemnity Agreement, CIC acted as a surety of and paid ELC's bond obligations under the Packers and Stockyards Act.

2. The Trustee objected to the CIC Proof of Claim on April 19, 2013 [Dock. No. 2096] (the "Objection"), arguing that the CIC Claim should be reduced by the amount of any recoveries that CIC obtains from the Third Party Obligors. The Trustee also argued that the CIC Claim should be subordinated to the claims of general unsecured creditors based on the language of 11 U.S.C. § 509(c).

3. CIC responded to the Objection on May 13, 2013 [Dock. No. 2161] (the "Response"), disputing the Trustee's arguments.

4. The Court entered an order confirming the *Trustee's First Amended Chapter 11 Plan of Liquidation* [Dock. No. 1490] (the "Plan") on December 17, 2012. The Plan became effective on December 20, 2012. See Dock. No. 1675.

5. Pursuant to and as more particularly described and defined in the Plan, creditors of ELC could "opt in" by submitting a properly executed "Opt In Agreement" to Trustee's counsel on or before the "Opt In Deadline." The creditors that chose to "Opt In" waived claims against Fifth Third and the Trustee in exchange for future distributions from the "Fifth Third Settlement Monies." CIC submitted an executed "Opt In Agreement" and became an "Opt In Creditor" under the Plan.

6. The Trustee and CIC desire to settle the Objection and Response and clarify CIC's status as an "Opt In Creditor" without the expense of further litigation. Accordingly, the Trustee and CIC agree as follows:

Stipulation

7. The CIC Claim is allowed as a general unsecured claim in the amount of \$875,000, subject to reduction if and to the extent that CIC recovers from the Third Party Obligors (the "Allowed Claim").

8. CIC shall notify the Trustee immediately upon its receipt of any recovery from Third Party Obligors and amend the CIC Proof of Claim as soon as reasonably practicable. The Trustee shall be entitled to reduce the Allowed Claim and CIC's share of any distributions made under the Plan to account for CIC's actual recoveries from Third Party Obligors without the need for other or further approval from the Court. To the extent that CIC receives distributions under

the Plan that exceed CIC's pro rata share based on the ultimate amount of the Allowed Claim, then CIC shall return any such overpayment provided that such overpayment is more than \$100.

9. CIC is classified as an "Opt In Creditor" with a single Opt In Claim in the amount of the Allowed Claim.

AGREED:

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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